

**FEDERAL COMMUNICATIONS COMMISSION**  
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May 27, 2009

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In re:      KATZ-FM, Alton, Illinois  
             Facility ID No. 48958  
             Citicasters Licenses, L.P.  
             File Number BPH-20080313ABN

Dear Counsel:

This letter is in reference to the above-captioned minor change application (the "Application") filed by Citicasters Licenses, L.P. ("Citicasters"), licensee of Station KATZ-FM, Alton, Illinois. Citicasters proposes a change in the community of license for KATZ-FM from Alton, Illinois, to Bridgeton, Missouri, as well as changes in the station's class and technical facilities. In the Application, Citicasters requests waiver of the application processing provisions of Section 73.3573(g)(4) of the Commission's Rules (the "Rules"). For the reasons stated below, we grant Citicasters' waiver request and the Application.

### **Background**

KATZ-FM is licensed (File No. BLH-19961118KA) to operate as a pre-1964 grandfathered short-spaced station at Alton, Illinois, on Channel 262B. It is currently short spaced to Station WYMG(FM), Channel 263B, Jacksonville, Illinois, by 83.8 kilometers. The Application proposes several modifications to KATZ-FM, including changing its community of license to Bridgeton, Missouri, downgrading to Class C3 status,<sup>1</sup> and altering its technical facilities.<sup>2</sup> Citicasters asserts that "no new area of interference will be created"<sup>3</sup> with regard to WYMG(FM) under its proposal, and therefore requests processing of the Application pursuant to Section 73.213(a) of the Rules.<sup>4</sup> Citicasters further states that its proposal would actually reduce

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<sup>1</sup> While the current transmitter site in Illinois is located in Zone I, the proposed transmitter site in Missouri is located in Zone II, necessitating the downgrade to Class C3. *See* 47 C.F.R. § 73.205.

<sup>2</sup> The technical changes proposed include modifications of KATZ-FM's effective radiated power, tower height, antenna height, antenna location, and directional antenna.

<sup>3</sup> KATZ-FM Application, Attach. 31, Engineering Exhibit.

<sup>4</sup> 47 C.F.R. § 73.213(a).

KATZ-FM's short spacing to WYMG(FM) to 26.9 kilometers. Citicasters acknowledges that it cannot demonstrate the existence of a fully-spaced allotment site and requests waiver of the community change application processing requirements of Section 73.3573(g)(4).<sup>5</sup> Finally, Citicasters asserts in its Section 307(b)<sup>6</sup> showing that the change in community of license should be approved under the allotment guidelines set forth in the *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) ("*Community of License Report and Order*").

## Discussion

*Section 73.3573(g)(4) Waiver.* An engineering study of the Application reveals that it would be grantable but for a violation of Section 73.3573(g)(4) with respect to KATZ-FM's short spacing to WYMG(FM). Specifically, Section 73.3573(g)(4) requires in part that non-reserved band applicants seeking a change in community of license demonstrate the existence of a suitable assignment or allotment site that fully complies with the spacing requirements of Section 73.207<sup>7</sup> without resort to the provisions enumerated in Section 73.213 for modifications to grandfathered short-spaced stations. Because Citicasters is unable to specify a theoretical fully-spaced KATZ-FM allotment site in the Application, the proposal is in violation of Section 73.3573(g)(4). As a result, Citicasters requests waiver of Section 73.3573(g)(4).

Commission rules state that a waiver may be granted, "if good cause therefore is shown."<sup>8</sup> The Commission's policy with regard to pre-1964 grandfathered short-spaced stations has been to consider a waiver of the spacing rules in limited circumstances, "provided that no new short spacings are created, no existing short spacings are exacerbated, and the potential for interference between the currently short spaced stations is not increased."<sup>9</sup> Citicasters has made such a showing in the Application; therefore, the waiver request will be considered.

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<sup>5</sup> KATZ-FM Application, Attach. 32, 307(b) Exhibit. Section 73.3573(g)(4) states that, "Non-reserved band applications must demonstrate the existence of a suitable assignment or allotment site that fully complies with §§ 73.207 and 73.315 without resort to §73.213 or 73.215." 47 C.F.R. § 73.3573(g)(4).

<sup>6</sup> See 47 U.S.C. § 307(b).

<sup>7</sup> 47 C.F.R. § 73.207.

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *Albemarle and Indian Trail, North Carolina*, Report and Order, 16 FCC Rcd 13876, 13877 (MMB rel. Jul. 13, 2001) ("*Albemarle*") (citing *Newnan and Peachtree City, Georgia*, Report and Order, 7 FCC Rcd 6307, 6308 (MMB rel. Sep. 28, 1992)), *rev. denied*, 19 FCC Rcd. 9098 (2004). The licensee in *Albemarle* subsequently filed a minor modification application to implement the community change, and an application for review is pending in that proceeding. See File No. BPH-20020116AAG, granted Jan. 6, 2004, *app. for review pending*.

Waiver requests for community of license and technical changes to pre-1964 grandfathered short-spaced stations are evaluated on a case-by-case basis.<sup>10</sup> In *Albemarle*, the Commission found that compelling public interest benefits warranted a waiver to allow the station at issue to change both its community of license and its technical facilities.<sup>11</sup> The decision to grant a waiver in *Albemarle* rested primarily on the public interest benefits of the application's (1) complete elimination of two, pre-1964 grandfathered short spacings; and (2) significant reduction of a third short spacing.<sup>12</sup> The Application presents a closer case, but ultimately does merit waiver of Section 73.3573(g)(4). As stated in *Albemarle*, "the Commission has traditionally considered the elimination and/or reduction of long-standing short spacings to be a matter of great importance."<sup>13</sup> Although the short spacing to WYMG(FM) is not eliminated by the Application, it is significantly reduced. The Application reduces the short spacing to WYMG(FM) from 83.8 kilometers to 26.9 kilometers, a materially greater reduction than the 44.4 kilometer reduction deemed significant in *Albemarle*. The significant improvement in station spacing is a compelling public interest benefit meriting waiver of Section 73.3573(g)(4).<sup>14</sup>

*Preferential Arrangement of Allotments.* In its Application, Citicasters seeks to change KATZ-FM's community of license without subjecting it to other expressions of interest, pursuant to the procedures set forth in the *Community of License Report and Order*. That decision requires such an applicant to demonstrate that (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities.<sup>15</sup> Citicasters has presented evidence demonstrating its compliance with the first two criteria.<sup>16</sup>

With regard to the third criterion, Citicasters must demonstrate that the proposed change constitutes a preferential arrangement of allotments under Section 307(b) of the Act, as

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<sup>10</sup> *Albemarle*, 16 FCC Rcd at 13879.

<sup>11</sup> *Id.* at 13878-79. In addition to a change in community of license, the station at issue sought significant changes in its transmitter site, effective radiated power, and antenna height. *Id.* at 13878.

<sup>12</sup> *Id.* at 13878.

<sup>13</sup> *Id.* at 13877 (citations omitted).

<sup>14</sup> In *Albemarle*, the Allocations Branch stated that its decision was "further buttressed" by the fact that the reallocation would provide a first local service and increased population coverage. *Id.* at 13879. With regard to these secondary public interest benefits, the instant § 73.3573(g)(4) waiver is buttressed by the fact that KATZ-FM will provide first local service to Bridgeton, Missouri. In contrast to *Albemarle*, however, KATZ-FM will actually serve 497,482 fewer persons under the proposal. The decision in this case rests primarily on the significant reduction of KATZ-FM's long-standing short spacing to WYMG(FM).

<sup>15</sup> *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870, 4874 (1989) ("*Community of License Report and Order*").

<sup>16</sup> See KATZ-FM Application, Attach. 32, Technical Exhibit. Alton, Illinois, will continue to receive local service from Station WBGZ(AM).

compared to the existing allotment.<sup>17</sup> The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).<sup>18</sup> Retention of Channel 262B at Alton, Illinois, would satisfy the fourth allotment priority, "other public interest matters," as Station KATZ-FM currently provides a second local service to Alton, Illinois, in the Alton Urbanized Area. By contrast, Citicasters asserts that the proposed reallocation to Channel 262C3 at Bridgeton, Missouri, would satisfy the third allotment priority, "first local service." We agree.<sup>19</sup> The proposed change therefore constitutes a preferential arrangement of allotments under Section 307(b) of the Act.

## Conclusion

We have evaluated Citicasters' Application and waiver request and find that they comply with all pertinent statutory and regulatory provisions and that granting of the Application and waiver would further the public interest, convenience, and necessity. Accordingly, for the reasons set forth above, Citicasters Licenses, L.P.'s request for waiver of Section 73.3573(g)(4) in this case IS GRANTED. IT IS FURTHER ORDERED, that the minor change application (File No. BPH-20080313ABN) filed by Citicasters Licenses, L.P., for Station KATZ-FM, Alton, Illinois, IS GRANTED.

Sincerely,



Susan N. Crawford  
Assistant Chief  
Audio Division  
Media Bureau

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<sup>17</sup> *Community of License Report and Order*, 4 FCC Rcd at 4874; *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983).

<sup>18</sup> *Id.*

<sup>19</sup> A *Tuck* showing is unnecessary under the facts of this case. Bridgeton, Missouri, is located within the St. Louis Urbanized Area, and the Application would place a 70 dBu contour over more than 50 percent of this urbanized area. While these facts would typically require a *Tuck* showing in order to demonstrate that Bridgeton is independent of St. Louis, the current 70 dBu contour of Station KATZ-FM at Alton, Illinois also covers more than 50 percent of the St. Louis Urbanized Area. A *Tuck* showing is unnecessary where, as here, a station providing 70 dBu coverage to the majority of an urbanized area prior to a change in community of license would continue to provide 70 dBu coverage to the majority of that same urbanized area following the community change. See *Greeley and Broomfield, Colorado*, Report and Order, 15 FCC Rcd 9419 (MMB rel. Jun. 2, 2000); *Boulder and Lafayette, Colorado*, Report and Order, 12 FCC Rcd 583, 584 (MMB rel. Jan. 10, 1997). See also *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1998).